



CITY ATTORNEY'S OFFICE

October 31, 2011

Washington State Supreme Court
c/o Justice Charles Johnson
Chair, Rules Committee
P.O. Box 40929
Olympia, WA 98504-0929

Re: Suggested Standards for Indigent Defense Services

Honorable Justices:

The City of Everett respectfully requests that the Court defer action on public defense standards until the Court receives public comment on a misdemeanor caseload standard. The standards are interrelated and should be considered together. If the Court acts on the misdemeanor standard after it acts on the other standards, comments on the misdemeanor standard will be less meaningful.

It is especially important that the Court not discount comments on the misdemeanor standard given the absence of meaningful opportunities to participate in the process to-date. Cities such as Everett that are consistently providing competent legal counsel to every indigent defendant have not had an opportunity to defend their system, as they would be able to do in an actual court case or in the legislative process. If the Court proceeds with a bifurcated process that discounts input on the misdemeanor standard, cities will be deprived of even this minimal opportunity to be heard.

Everett will provide more detailed comments on the misdemeanor caseload standard if and when that standard is published for comment. In general, we believe the caseload cap concept as articulated in the proposed standards is problematic because it assumes that all lawyers, in all jurisdictions, under all circumstances have the same capacity. This is contradicted by observations we all know to be true: work capacity varies tremendously from one lawyer to another; case complexity varies among case types and among cases of the same type; the time required for certain cases varies by jurisdiction; experienced lawyers are more productive than inexperienced lawyers; and advances in technology allow lawyers to handle more cases today than they could in the 1980s when these same numeric limits were first proposed.

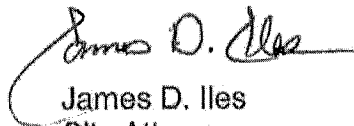
Everett awarded its indigent defense contract to a group of experienced lawyers who are able to competently handle more cases than less experienced lawyers could

handle. A city required to hire additional lawyers to comply with a caseload cap that is below the capacity of an experienced lawyer may have to choose between experienced lawyers it cannot afford and less costly but inexperienced lawyers.

Everett's public defense firm invested heavily in technology so they could provide quality representation to more defendants. Lawyers who have invested in technology should not be penalized by being held to a standard designed for those who have not.

Everett endorses the letters submitted by the Association of Washington Cities and the Washington State Association of Municipal Attorneys and shares many of the concerns discussed in those letters. We also direct your attention to a letter submitted by Hugh Spitzer on behalf of a coalition of cities, including Everett, which discusses legal authority for the position that the one-size-fits-all standard being proposed should not be enacted by court rule. Everett, as well as others, should not be forced by the rule to fix a system that is not broken.

Sincerely,



James D. Iles
City Attorney